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TAGS: [EINV](#) [KIDE](#) [CASC](#) [PGOV](#) [BU](#)
SUBJECT: BULGARIA: 2009 REPORT ON INVESTMENT DISPUTES AND
EXPROPRIATION CLAIMS

REF: A) STATE 49477 B) 2008 SOFIA 406

1. The United States government is aware of two (2) claims of U.S. persons that may be outstanding against the Government of Bulgaria (GOB), and one (1) that has been closed in the past one year.

2. This report is keyed to reftel instructions.

CASE 1

(A.) Claimant A (ongoing case)

(B.) 2000

(C.) In 1999, Claimant A, a U.S. fertilizer company, established a subsidiary in Bulgaria. While Bulgaria was undergoing its privatization process, the subsidiary of Claimant A purchased a controlling interest in a Bulgarian fertilizer company and became a primary holder of the fertilizer company's shares. Shortly thereafter, a Ukrainian partner in Claimant A's subsidiary acquired all the claimant's shares in the fertilizer company through a scheme involving a bogus loan. The Ukrainian partner did this by utilizing a separate holding company that it controlled and which was registered in Cyprus. Acting on behalf of the subsidiary of Claimant A, but without its consent or authority to act as power of attorney, the Ukrainian partner signed a loan agreement between the claimant's subsidiary (on behalf of the fertilizer company) and the separate holding company for USD 4 million in order to purchase pipes. When, as expected, the fertilizer company could not repay the loan, the Ukrainian partner's holding company sued and gained control over Claimant A's subsidiary and consequently acquired all the subsidiary's shares of the fertilizer company.

On August 30, 2000, Bulgaria's Regional Court in Vratsa issued a decision regulating the transfer of 86 percent of the shares (9,683,000 total) of the fertilizer company from Claimant A's subsidiary to the Ukrainian partner's holding company.

Shortly after the holding company took over the shares of the fertilizer company, Bulgaria's Privatization Agency agreed to sell the remaining 14 percent of the shares still held by the Government of Bulgaria to the holding company.

Since that time, Claimant A has been ensnared in a legal battle centered on questions of jurisdiction and reciprocity. Bulgarian courts claimed that they did not have jurisdiction because the case is between two companies that were registered abroad. When Claimant A won its case before the New York Supreme Court in June 2001, Bulgaria refused to recognize the New York court's decision because the United States and Bulgaria did not have a reciprocity agreement.

On July 14, 2003, Sofia's City Court issued a decision ordering the Ukrainian partner's holding company to restore the shares it had acquired through the unauthorized loan to Claimant A's subsidiary. In response, the holding company submitted an appeal to the Sofia Appellate Court, and on December 18, 2003, it overruled the decision

of Sofia's City Court.

Following the above decision, Claimant A submitted an appeal before the Supreme Court of Cassation (SCC), which was heard by its Commercial Division (case No. 144/2004) on June 16, 2004. This is Bulgaria's highest court and its decision was considered final for all parties concerned. On September 10, 2004, a three-judge panel of the SCC upheld the decision of the Sofia Appellate Court in favor of the holding company. On March 8, 2005, a five-judge panel of the Supreme Court of Cassation issued its final decision and turned down yet another appeal.

Meanwhile, a separate case went forward in the Vratsa District Court based on a claim made by Bulgaria's state-owned natural gas company and Bulgaria's state-owned electric company to find the fertilizer company insolvent. The court declared the fertilizer company insolvent on December 14, 2004.

Despite the District Court's ruling, Bulgaria's Post-Privatization Agency (PPA) initiated legal proceedings against Claimant A for failing to meet commitments under its privatization contract. In addition, on April 11, 2005, the PPA sent a letter requesting that Claimant A pay USD 7.4 million for non-performance under the privatization contract. The U.S. Embassy asked the PPA to reconsider this in light of the Bulgarian Court's determination that Claimant A is not the owner of the plant. The director of the PPA responded that it was her understanding that the privatization agreement allowed for 100 percent of the company shares to be transferred, while all liabilities for performance under the privatization agreement stayed with the buyer. In June 2009 the attorney for Claimant A confirmed the company is waiting to see whether Bulgaria will seek to recover the aforementioned alleged damages in U.S. courts, and if so, they will likely counterclaim.

CASE TWO

(A.) Claimant B (resolved)

(B.) 1999

(C.) In 2008 this case was settled to Claimant B's satisfaction when it agreed to enter into a Public-Private Partnership (PPP) with the Government of Bulgaria through which the state acquired 25 percent of Claimant B's project. In return, Claimant B was able to carry on with its investment.

CASE THREE

(A.) Claimant C.

(B.) 2008

(C.) On February 25, 2008, the largest Bulgarian law firms complained before the Sofia Bar Council and Supreme Bar Council about alleged breach of the Bar Act by eight international law firms on grounds that these firms provided legal services (attorney services, including litigation services) without registration as attorney companies with the local Bar Council. Claimant C, a U.S.-UK law firm, was providing its services through a branch of an Austria-registered attorney company. To comply with local law, Claimant C had registered the branch under the Commercial Act in the Commercial Register.

In March 2008 the same Bulgarian law firms filed a complaint before the local Competition Commission for alleged breach of competition law by the eight international law firms, including Claimant C. The local law firms argued that registering a local office with an original name was against the local Bar Act. The local Bar Council sided with the local complaints and barred the foreign companies from registering a local office with their original names.

The position of Claimant C is that the current Bar Act is not in compliance with EU law as it does not provide for the possibility for international firms to establish partnerships, branches, or agencies in Bulgaria. Claimant C has attempted to explain this

position in a letter to the Minister of Justice and a non-paper to the President, the Speaker of Parliament, and the Prime-Minister (PM). Despite these efforts, in July 2008, the Competition Commission decided to impose fines on four of the foreign firms for violating the Competition Law. In October 2008, Claimant C filed an official complaint before the EU Commission arguing obstruction of business by local law firms.

In August 2008, Claimant C appealed the Competition Commission's decision before the Supreme Administrative Court (SAC). On December 1, 2008, the SAC had a public hearing during which Claimant C requested the SAC refer it to the European Court of Justice (ECJ). On January 19, 2009, the SAC ruled that it would not refer the case to ECJ. During a second hearing in February 2009, the SAC decided to consider the case within the term prescribed by the law, but a final decision is still pending.

After another attempt to register a local branch with the Sofia Bar in January 2009 failed, Claimant C appealed the decision before the Supreme Bar Council. The case was heard on May 20, 2009, but it is still pending in anticipation of the decision of the Supreme Court of Cassation. During a public hearing on May 20, 2009, Claimant C filed a request for referral to the European Court of Justice (ECJ) for a preliminary ruling, but the Supreme Court of Cassation refused to refer the case although as the court of final instance it is obliged to refer the case to the European Court of Justice.

Embassy staff attended the public hearings at the Competition Commission and the Ambassador, Deputy Chief of Mission and Economic and Commercial Officers raised Claimant C's case with all levels of the Bulgarian Government. In addition, Embassy Sofia included Claimant C's ongoing dispute in its submission to the State Department's 2009 National Trade Estimate.

13. Claimant reference list:

Claimant A: IBE Trade, U.S. Company
Claimant B: Dundee Precious Metals, Canadian-U.S. Company
Claimant C: DLA Pipers, Law firm

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